

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.28309 of 2012**

Arising Out of PS.Case No. -116 Year- 2010 Thana -null District- KHAGARIA

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1. Rajesh Kumar Keshari S/O Baij Nath Keshari R/O Bakhari Bazar, P.S. Bakhari,  
Distt. - Begusarai

.... .... Petitioner/s

Versus

1. The State Of Bihar  
2. Sunita Devi @ Tripul Devi W/O Anil Paswan R/O Vill. - Bahadurpur, P.S.  
Alauli, Distt. - Khagaria

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Shubhesh Pandey

For the Opposite Party/s : Mr. Ram Bachan Singh (APP)

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date: 04-09-2017**

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 14.03.2011 passed by the Sub-Divisional Judicial Magistrate, Khagaria, in Complaint Case No.116-C/2010, by which the learned Sub Divisional Judicial Magistrate, Khagaria, after holding enquiry has found prima facie case under Section 406 of the Indian Penal Code against the petitioner.

Learned counsel for the petitioner has submitted that for the alleged piece of land there is no any written agreement or any chit of paper to show that the money, as described in complaint petition, was ever paid by the complainant to the petitioner. It has been further



submitted that the complainant has already filed a case for specific performance of contract vide Title Suit No. 08 of 2011, which is still pending. It has also been submitted that in enquiry none of the witness including the complainant has supported the case of entrustment of money to the petitioner. In fact, CPW-3, Kameshwer Paswan (father-in-law of the complainant) has specifically stated during the enquiry that there was no money paid to the petitioner.

It is an admitted fact that complainant has already filed suit for specific performance of contract vide Title Suit No. 08 of 2011, which is pending. The petitioner has also appeared in that suit.

This Court further find that there is no chit of paper filed with the complaint petition to substantiate the allegation against the petitioner that they entered into the agreement for sale of land and money was paid by the complainant to the petitioner.

In such circumstances, this Court finds that purely civil dispute is sought to be given a colour of criminal offence to wreck vengeance against the petitioner in order to put pressure on petitioner to execute the sale deed in favour of complainant. The complainant has already filed suit for specific performance of contract against the petitioner, that is pending.

As such, this Court is of the view that continuation of the criminal proceeding against the petitioner is mere harassment to him



and abuse of process of court.

Accordingly, the impugned order dated 14.03.2011 passed by the Sub-Divisional Judicial Magistrate, Khagaria, in Complaint Case No.116-C/2010, along with entire criminal proceeding against the petitioner is hereby quashed.

This application is, accordingly, allowed.

**(Sanjay Priya, J.)**

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